

H Fraud Conference hosted by Kentucky Consular Center, May 2011

Fraud Trends:

RELEASE IN PART
B7(E),B7(C),B6

REVIEW AUTHORITY: Barbara Nielsen,
Senior Reviewer

Petition Padding—Petitioning company requests more workers than needed or months earlier than truly needed. The extra slots can be sold to beneficiaries, or the extra workers can be routed to other companies for a fee paid to petitioning company.

Benching—not employing the applicants full time and not paying the applicants while they are sitting on the bench, waiting for work. This occurs most frequently in companies where the beneficiary is forced to work for a client company, much like a temp or subcontractor.

Wage violations—this can included paying workers based on production, rather than by hour, or not paying workers at all, or not employing applicants full time and failing to pay them (benching.) These can be illegal labor law violations. Examples include hotel workers (housekeepers) paid by room, rather than by hour. Hotel or other workers might also not be paid during slow periods. **Year-round employment of seasonal workers:** employers flip-flop employees to cover different seasons, such as employing landscapers as snowblowers.

Chain-linked employment: working for related companies. If the temporary need for labor isn't proved to DOL, original company might create a shell company who will petition for the desired employees.

Staggering:

- Petitioner files multiple petitions. (Might have misrepresented to DOL true labor need, stating they needed more people than they really needed.)
- Petitioner files petition for more people than it needs, brings people over as it needs them, misrepresenting timing of need for labor to DOL.
- Petitioner files petitions for more people than it needs, and towards the end of the petition sells the unused slots to other employers.
- Agricultural Associations will file multiple temporary labor certificates on behalf of up to 20 employers.

Falsified names on I-129: Employers or agents list names from phone books on petition and then later sub people out to get the workers they wanted all along.

Year-round workers: Seasonal workers used for different purposes in different seasons, such as landscapers who become snow blowers in the winter. Often, non-temporary nature of jobs misrepresented to Dept of Labor.

Drug running: Over 10 H2A agricultural workers (lettuce pickers) have been busted as drug runners. They live in Mexico and cross daily into the US.
Shell companies

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Workforce legalization: H2Bs used to legalize illegal workers. Applicants return to home country and are told to lie about their US presence.

Swap (or Switch): worker goes back and forth between different companies. This is common with carnival companies. The employee is supposed to work for the company that operates the rides, but might temporarily work for the concession company, depending on the need of the amusement company versus the concession company at each stop.

Not following itinerary: worker works in different locations than those submitted on the Temporary Labor Certificate to the Department of Labor. Very common with carnival companies. Could represent labor violation, as the initial application to Dept of Labor may have misrepresented the true labor need. [REDACTED]

Bait & Switch: beneficiary has been petitioned for to perform a specific job and ends up performing another job.

Bait, Switch, & Dump: [REDACTED]

Company A has a good track record for filing petitions. (BAIT.)

Company B is often in the same business as Company A, even a competitor, but Company B's owner is friends with Company A's owner. Company B gets Company A to bring in more workers (padding) than he needs so they can work for Company B. (SWITCH.)

Workers then overstay while working for Company B, and the owner of Company B doesn't want to get caught with these workers, so he sends them to work for Company C. (DUMP.)

Fraudulent Use of Company Name—without company knowledge. In several cases, attorneys have added on extra beneficiary names to the petition request without the petitioning company's knowledge.

Surrogate Companies: will petition for workers on behalf of another company that cannot file a petition itself [REDACTED]. **Coaching:** in several fraud cases involving [REDACTED] padded petitions, [REDACTED] coached the applicants in their appearance. [REDACTED]

[REDACTED] the petitioning company compiled a list of the 40 most frequently asked questions and coached applicants on how to answer.

Misrepresenting marital status: Applicants claim to be single, but spouses [REDACTED] already work for the same petitioner. True purpose is to join spouse in the US. [REDACTED]

Illegal Fees:

New regulations as of 2009 prohibit applicants from paying H2B & H2A fees. Under these new regulations, the petitioner must pay these costs. No job placement fee is allowed whether direct or indirect unless the fee is voluntary & covers real costs. The Dept. of State primarily regards

[illegible]

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Posts should ask:

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- Applicant's prior refusals

- Applicant's prior visas
- Applicant's prior time in the US

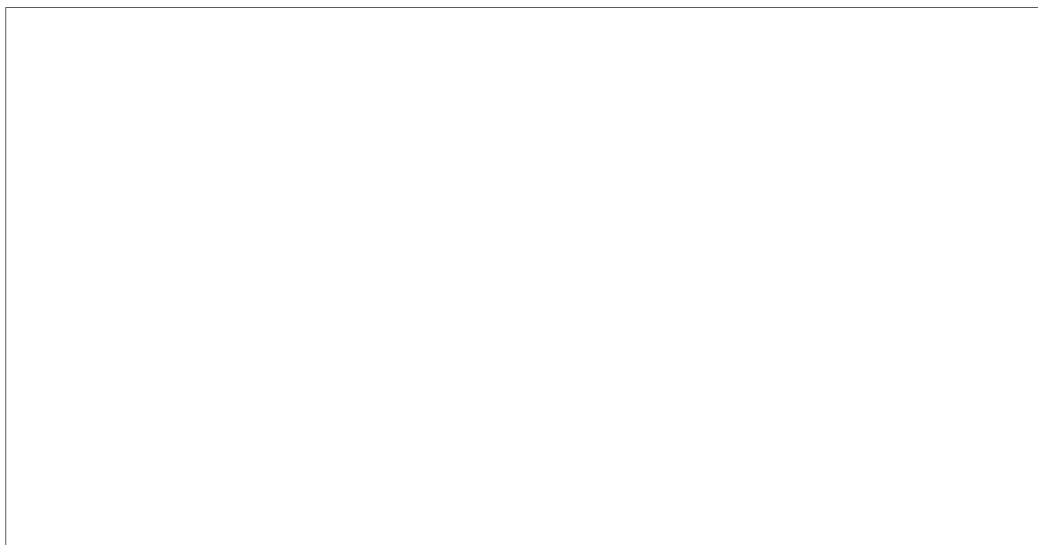
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Interview questions to ask:

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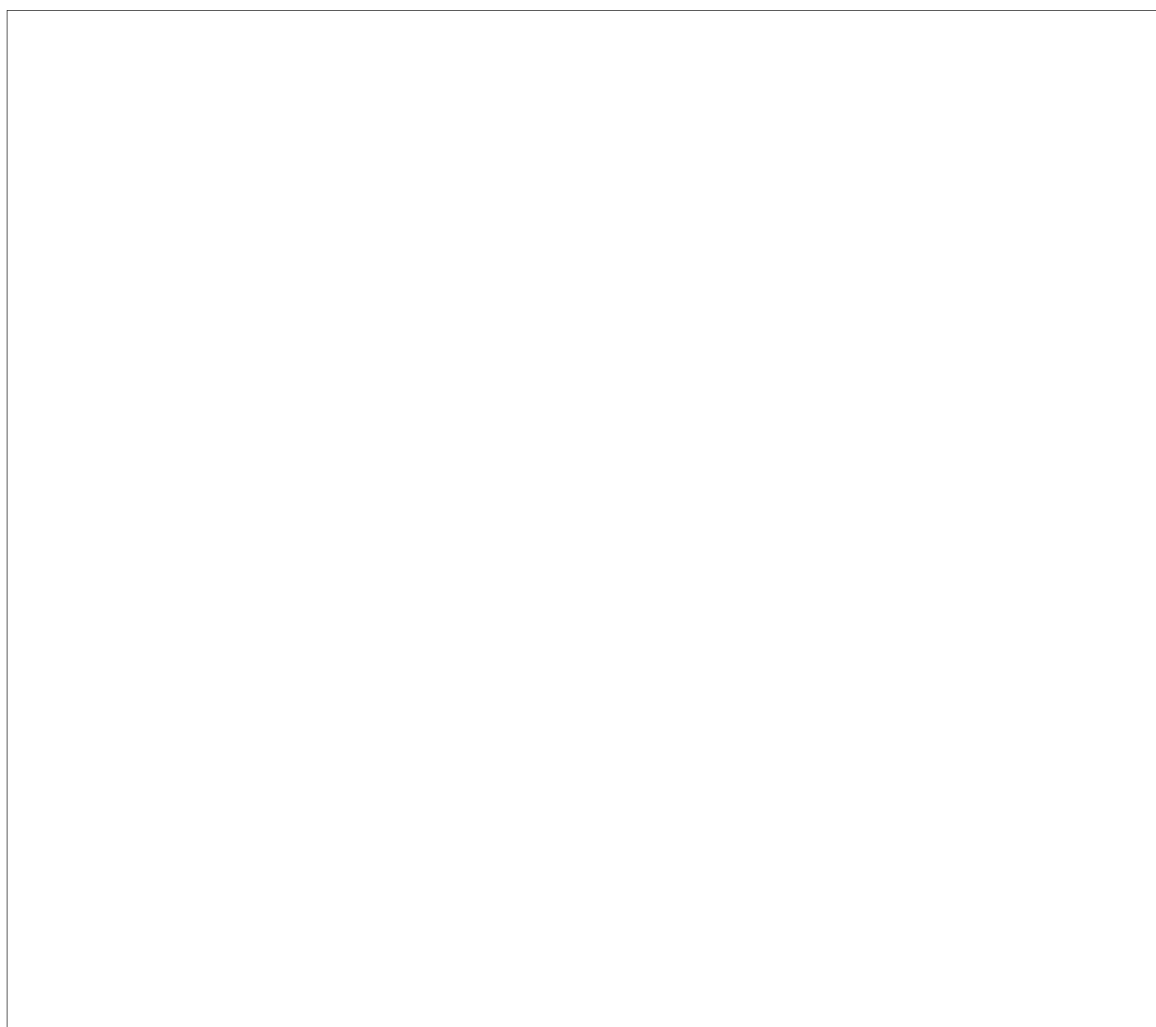
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Things for posts to look for:

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Prevention/Outreach Methods:

- Mission Israel run tapes in waiting room and on YouTube of Israelis who have violated US immigration law in the past and now regret it. (Common fraud trend is to work on b1/b2 after mandatory military service as part of their extended “holiday”.)
- Mexico has ordered small plastic passport protectors (ziplock sleeves/bags) for the passports with Wilbur Wilberforce info and DOS logo printed on the passport protectors. (They were tired of handling sweaty, grimy passports that had been kept in the agricultural workers’ back pockets. The workers kept their passports in their pockets while working in the US in case questioned by immigration authorities out in the field. They only cost 40 cents apiece and all successful H applicants get one.)
- Mexico has a 1-800 hotline to report visa fraud or worker abuse (exploitation, labor violations, etc).
- Manila does all H&L interviews at once, on Tuesday & Thursday afternoons.
- Guadalajara ran 30 second radio spots 8 times a day for 1 month during peak H2B season (April). They got a deal, and it only cost \$5,000.
- Guadalajara also created a Wilbur Wilberforce video.
- Dominican Republic created the “Maco Mambo” (a jingle to the tune of the Macarena), focused on helping them find/prevent fixers. It’s popular, runs on the radio, and is also on YouTube.
- El Salvador had a good billboard and TV ad.

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Past examples of large-scale fraud:

Dead Sea Minerals:

10 Tel Aviv 140

In Israel, many young people go on extended vacations/adventures after their mandatory military service. Post had a problem with many applicants going on b1/b2s and working in malls selling Dead Sea products.

Housekeepers:

Housekeepers arrived and were dumped in a remote location, then informed that they would only work at the hotel 1-2 days/week and must work cleaning condos, for which they would be paid less. They were taken everywhere in group vans, including in the weekly trip to the grocery store, so that they were always under the control of the employer. Their passports were held, they were charged for housing, forced to live co-ed, and threatened by an enforcer. Their families were also threatened in their home countries. The employer would periodically make an outraged show of firing someone, then would rehire them as a means of control.

Operation [redacted]

The company [redacted] subcontracted housekeepers and other labor out to major companies such as [redacted] between 2002 and 2009. The company kept a significant portion of the employees' salary paid by [redacted] (such as \$3 out of every \$10 paid), and charged the workers fees. The company also padded their petitions with more than the required workers.

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[redacted] Company was a high-scale restaurant by day, burlesque show by night. On Facebook, the owner advertised that his show featured sexy burlesque shows and naked girls.

[redacted] petitioned for 900 lifeguards, far more than they could possibly use.

[redacted] J1 Summer Work Travel applicants. Real problem in [redacted] with lifeguards who can't swim.

Fraud observations:

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Highest overstay rate: 41% of Filipino housekeepers overstay, followed by food servers.

Very common extensions: are they really temporary workers?

New Jersey is the mecca of IT H1B (Indian) fraud.

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DV fraud: when people receive scam e-mails saying they won the DV, forward to dsinternetscam@state.gov

Attempts to use J-1 visa in lieu of H2B

Various posts have seen a new trend where applicants who should be H2Bs are applying for J1 intern or trainee visas instead. This is likely pushed by work agencies because:

- H visas are numerically limited; J visas are not. Placing an applicant in a J slot will allow the agency to recruit additional people thus making a larger profit.
- Agencies are limited on the fees they can charge for their H visa applicants. Agency fees are higher for J visa applicants, again making a greater profit for the agency.
- An applicant can normally stay in the U.S. longer in a J visa (one-year to 18-month programs) as opposed to a 6 or 9-month H visa, reducing the number of time an applicant must file for extensions.

General Overview of J visas - 9 FAM 41.62

The Exchange Visitors Program has two components: 1) Academic/Govt Programs and 2) Private Sector Program.

TRAINEE 9 FAM 41.62 N4.14

- 1) Degree or professional certificate from a post-secondary academic institution outside of U.S.
- 2) At least one year of prior work related experience in his or her occupational field in his or her home country
-OR-
- 3) 5 years work experience in his or her occupational field.

INTERN 9FAM 41.62 N4.5

- 1) Currently enrolled in and pursuing studies at a degree- or certificate-granting post-secondary academic institution outside of the U.S.
-OR-
- 2) Graduated from such an institution no more than 12 months prior to his or her exchange visitor program start date
-AND-
- 3) Who enters the U.S. to participate in a structured and guided work-based internship or her specific academic field.

APPLIES TO BOTH

- Must not be unskilled positions
- Must not be casual positions
- Involve patient care
- No child or elder care



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Cape Town Examples:

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1. *Golf Resort Seasonal Workers:*

[REDACTED]

Often there are H2B visa holders performing the exact same work.

2. *Food & beverage trainee for an indoor water park:* was going to do unskilled labor, no education in hospitality,

[REDACTED]

3. *Applicant with 5 years waitressing experience to be hospitality trainee:*

[REDACTED]

4. *Chef internships for Aramak,* [REDACTED] For supposedly already skilled chefs/culinary workers, training plans included:

[REDACTED]

essential” rather than advanced skills

[REDACTED]

5. *Mgt trainee at amusement park to:*

All unskilled positions.

6. *A hospitality trainee*

[REDACTED] had no work experience in the hospitality area. All prior jobs had been in bookkeeping.

7. *Recent high school grad to do farm work as an intern.* A recent high school grad does not meet the requirement for post secondary study regardless of the subject studied in high school.8. *Applicant to work with special needs children in a residential setting.* Not allowed as trainee programs cannot involve patient care.**Interview Suggestions:**

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

REMEMBER: Trainees should not be recruited for “employers” but rather should be going to the United States for a hands-on educational experience.

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KCC

KCC receives the I-129s from USCIS, scans them in, [REDACTED] and does a quality check. If USCIS does not receive a duplicate copy of the petition, they won't send a copy to KCC. Lack of a petition copy for KCC is the main reason why petitions aren't entered [REDACTED] right away. USCIS charges petitioners several hundred dollars to make a copy but will do it for free in extreme cases when requested by other government agencies.

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Posts can now send petition revocation requests electronically, rather than by hard copy, to [REDACTED] KCC will print out a hard copy and send it on to DHS, which still needs hard copies.

[REDACTED]

[REDACTED]

because KCC goes to pains to ensure that the name of the petitioning company is consistent, to maintain the integrity of data. (For example, IBM can show up as I.B.M., International Business Machines, Int'l Business Machines, IBM, etc.) 10 State 130541

Petition Revocation Requests:

When drafting a petition revocation request memo, be concise, state specific facts, cite the INA rather than the FAM, and include whatever official paperwork possible as attachments. Official paperwork might include: signed statements, payroll documents, reports of field investigations, descriptions of duties written out by applicants, etc. [REDACTED]

[REDACTED] (If possible, have the ARSO-I witness the signatures, so they'll be stronger evidence in court.) When phrasing arguments, do not make judgment or unsupported statements. For example, rather than stating that the applicants "is not qualified," state that applicant "is not qualified because of A, B, and C." When drafting, start with the most important piece of derogatory information. Include a copy of the I-797 and or I-129 to save the USCIS adjudicator the effort of pulling the files. Be sure to include a DS-3099, and check one of the boxes—if none of the boxes are applicable, the petition may not be revocable. If you suspect fraud even remotely, be sure to check the fraud box on the DS-3099.

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[REDACTED]

Revocation time: According to one study, only 25% of petitions are revoked within 6 months, and 35% within 6-12 months. USCIS upholds petitions more quickly than it revokes.

There is a USCIS adjudicators field manual which includes reasons to approve revocations, which would be helpful if obtainable.

If USCIS intends to revoke a petition, it sends out a Notice of Intent to Revoke (NOIR).
 Petitioners have 30 days to respond to a NOIR. [REDACTED]

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Potential grounds for revocation:

- Employment at company other than petitioner
- Employment in states other than those listed on petition
- Year-round employment
- Alien trafficking
- Labor violations
- Petitioner goes out of business (automatic revocation)
- Dept of Labor revokes labor certification (automatic revocation)
- Petitioner withdraws petition (automatic revocation)

USCIS reaffirms in cases where:

- Petitioner rebuttal is convincing.
- There is a different interpretation of requirements for the visa category.
- Derogatory information is irrelevant to the petitioner.
- [REDACTED]

USCIS revokes in cases due to:

- [REDACTED]
- [REDACTED]
- Beneficiary's withdrawal coupled with findings of labor violations.
- Petitioner's rebuttal evidence not convincing.

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[REDACTED]

Posts can now send petition revocation requests electronically, rather than by hard copy, to

Further notes on USCIS processing:

- H2A cases are always expedited. Petitioners cannot pay premium processing fees for H2As because they are already processed as quickly as possible. All processing is now done in California to centralize the system. Approval notices are overnighted to KCC, unless the petitioner did not submit an extra copy of the petition, in which case, KCC will not be able to enter the petition into PIMS.
- H2B cases can be expedited if employers pay premium processing. As of Nov 2010, this premium processing fee was \$1225.

RFE = Notice of Intent to deny petitions (or is this Dept of Labor?)

Department of Labor:

Obtaining a Dept. of Labor certification of the need for foreign employees is the first step in filing a petition. DOL refers to this form as the LCA, Labor Condition Application. DOS refers to the approval as the Temporary Labor Certification (TLC). Employers must complete an LCA for each workplace location. DOL does not review validity of the information submitted on the form. If post discovers that a labor violation has taken place, post should send a petition revocation request.

Petition Revocation requests that note labor violations trigger DOL investigations.

Typically misrepresented information on the LCA:

- H1Bs true occupation
- True number of H1B workers sought
- Rate of pay
- Whether applicants are part-time or full-time
- Address where documentation is kept
- Prior employment

Frequent Labor Violations:

- Failure to pay employee
- Benching
- Overtime not paid
- Having foreign employees work during a strike
- Illegal deductions, such as a "training fee".

Failure to pay applicants wages on arrival:

H1's can have a 60 day "holiday", that is, they may enter the US and not be paid for up to 60 days. But by the 61st day, the employer is required to pay the applicant. Applicants must be paid as "soon as they come under the employer's control". By the 61st day, employers/employees can no longer claim that they are not working, and they must be paid. Employers frequently use the

excuse that employees are using this time to fill out paperwork, gaining required licenses, etc. DOL considers this to be work for which the employee should be paid.

Posts should ask applicants:

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FDNS—Fraud Detection & National Security

Posts can request a site visit from this unit of DHS. In the last 5 months, FDNS made 40 site visits. Of these, 70% had real fraud concerns. The other 30% may have had fraud concerns, but not enough to defend legally. To request a FDNS site visit, contact [REDACTED] FPM at KCC, who will give the greater guidelines and tips. General tips include:

- Articulate as much as you what leads you to believe fraud has occurred.
- Be specific about what you want verified.

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New Regulations in 2009:

- Workers must be named if from non-list countries or physically present in the US.
- Time required outside the US was reduced from 180 days to 90.
- Temporary Labor Certificate (TLC) required.
- Starting date for H2Bs must match date on TLC and petition. (Employers were hogging cap #s by having early start dates.)
- Fees prohibited to protect H2B workers, with the side benefit of protecting US workers. (This because foreign workers were getting paid less than minimum wage. [REDACTED])
- [REDACTED]
- Employers are required to notify DHS if employee is no longer working there, otherwise they are subject to a fine of \$10. (This has resulted in the “terminated” notes DHS enters. *(Post can send USCIS feedback/suggestions for changing the “terminated” language through Jeff Gorsky to [REDACTED])*
- H2B caps divided seasonally. 33,000 assigned the first 6 months, and then the remaining 33,000 plus whatever was not used in the first 6 months is assigned in the second 6 months.
- \$150 H2B fraud fee instituted.
- If applicants are from a non-list country, further information is required regarding applicants, including full name and POB.

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- Employers must submit an original anti-fraud ETA Form 9142 from DOL.
- Employees on extension of stay requests must be named. (For a time, USCIS was inappropriately denying petitions if applicants weren't from list countries. Applicants from non-country lists are okay, they just require further information. USCIS is now approving these petitions.)

H & L funding:

Language changed from “exclusively” for H&L fraud prevention to “primarily” for H&L fraud prevention. CA would like to change it to use funding for all visa fraud prevention.

What can you use H&L funding for?

- Positions
- Equipment
- Travel
- Verification travel (these need to be reasonable)
 - Can be travel to make neighborhood inquiries to verify claimed identities, relationships and qualifications
- Software
- Media access/campaign blitz
 - Mexico uses H&L funds for a 1-800 hotline
- Public outreach material
 - Printing of Wilbur Wilberforce pamphlets
- Conferences (can't fund per diem at conferences—look at CA funding matrix)
- Regional Workshops
- Document verification costs
- Overtime, so that staff can make phone inquiries after hours, during US open hours
- Credit agency accounts
- H&L investigator positions (be sure to not to forget continuing costs, such as salaries)
 - *H&L investigators only have to spend 51% of time doing H&L work*
- Consular assistant or EFM who:
 - Drafts revocation requests
 - Participates in applicant interviews
 - Contacts petitioners to investigate claimed job offers
 - Performs internet research of petitioners
 - Pre-screens cases

Embassy Mexico's Fraud Datatbase, FRIDA:

Mission Mexico's shared database, the Fraud Investigation Database, is named after Frida Kahlo. There are different levels of access, such as RSO and FPM roles. There are also read-only roles vs. author roles. [REDACTED]

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